

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2007 OCT 17 P 2:37

EMMY ST. UPERY,
Plaintiff

vs.

CHRISTOPHER S. MURPHY and
COUNTRY VIEW TRUCKING, LTD.,
Defendants

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CIVIL ACTION NO. SA-07-CA-796-FB

CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: 

DEPUTY

**DEFENDANT CHRISTOPHER S. MURPHY'S ORIGINAL ANSWER TO
PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE U. S. DISTRICT JUDGE:

Defendant CHRISTOPHER S. MURPHY ("Murphy"), files this Original Answer to Plaintiff's Original Petition, and would respectfully show the Court as follows:

I. ADMISSIONS AND DENIALS OF PLAINTIFF'S ALLEGATIONS

Murphy answers the allegations contained in Plaintiff's Original Petition as follows:

1. With respect to the allegations in Paragraph 1 of Plaintiff's Original Petition, Murphy admits that Plaintiff seeks monetary relief in an amount greater than the jurisdictional minimum of this United States District Court, exclusive of costs, prejudgment interest, and attorneys' fees, with Plaintiff's amount in controversy exceeding the sum of \$75,000.00, exclusive of interest and costs.

2. With respect to the allegations in Paragraph 2 of Plaintiff's Original Petition, Murphy has insufficient information with which to either admit or deny the allegations in this paragraph and, therefore, denies same.

3. With respect to the allegations in Paragraph 3 of Plaintiff's Original Petition, Murphy admits that he is a citizen of the foreign country of Canada, with his residence located at 552 Barbara Weit Road, Summerside, Prince Edward Island, Canada.

4. With respect to the allegations in Paragraph 4 of Plaintiff's Original Petition, Murphy denies CVT is an existing and operating limited liability company, as CVT no longer exists or conducts business operations. Murphy admits that, at all times prior to its dissolution, CVT was a foreign citizen and resident of the Country of Canada, with its principal place of business located at 3979 Route 1A, RR2, Travellers Rest, Prince Edward Island, Canada. As to all other allegations of Plaintiff's Paragraph 4, Murphy has insufficient information with which to either admit or deny the allegations in this paragraph and, therefore, denies same.

5. With respect to the allegations in Paragraph 5 of Plaintiff's Original Petition, Murphy admits that the November 1, 2006 tractor-trailer/automobile collision forming the basis of Plaintiff's claims occurred in Bexar County, Texas and that Plaintiff suffered all or a substantial part of her asserted injuries and damages in Bexar County, Texas.

6. With respect to the allegations in Paragraph 6 of Plaintiff's Original Petition, Murphy admits Plaintiff's lawsuit arises out of a tractor-trailer/automobile collision which occurred on November 1, 2006. Murphy denies all other allegations of Plaintiff's Paragraph 6.

7. With respect to the allegations in Paragraph 7 of Plaintiff's Original Petition, Murphy denies that he was in any way guilty of the following acts and omissions:

- a. in failing to maintain a proper lookout;
- b. in operating the vehicle in willful and wanton disregard for the safety of persons and property, including the Plaintiff herein;
- c. in failing to timely and/or properly apply the brakes to as to avoid the subject collision;
- d. in failing to turn the vehicle to the right or left so as to avoid the subject collision;
- e. in failing to maintain an assured clear distance between his vehicle and Plaintiff's vehicle;

- f. in switching lanes when unsafe to do so;
- g. in failing to yield the right of way.

8. With respect to the allegations contained within Paragraph 8 of Plaintiff's Original Petition, Murphy denies that any of the aforementioned acts and/or omissions referred to in Paragraph 7 of Plaintiff's Original Petition as allegedly done by him constitute negligence. Murphy further denies that any of his actions and/or omissions were a proximate cause of any injuries or damages sustained by Plaintiff. Murphy admits Plaintiff's asserted injuries and damages are in an amount within the jurisdictional limits of this United States District Court.

9. With respect to the allegations contained within Paragraph 9 of Plaintiff's Original Petition, Murphy denies that any of the aforementioned acts and/or omissions referred to in Paragraph 7 of Plaintiff's Original Petition as allegedly done by him constitute negligence. Murphy further denies that any of his actions and/or omissions were a proximate cause of any injuries or damages sustained by Plaintiff as a result of the November 1, 2006 collision forming the basis of Plaintiff's lawsuit. Murphy further denies that, at the time of the November 1, 2006 collision forming the basis of Plaintiff's lawsuit, he was Defendant Country View Trucking, Ltd.'s employee acting within the course and scope of any alleged employment with Country View Trucking, Ltd. As to the remainder of the allegations contained within Paragraph 9 of Plaintiff's Original Petition, Murphy has insufficient information with which to either admit or deny the allegations in this paragraph and, therefore, denies same.

10. Murphy denies all of the allegations in Paragraph 10 of Plaintiff's Original Petition.

11. Murphy denies the allegations in Paragraph 11 of Plaintiff's Original Petition, except that Murphy admits that Plaintiff's asserted injuries and damages are in an amount within the jurisdictional limits of this United States District Court.

12. Murphy denies the allegations in Paragraph 12 of Plaintiff's Original Petition, except that Murphy admits that Plaintiff's asserted injuries and damages are in an amount within the jurisdictional limits of this United States District Court.

13. It is unnecessary for Murphy to either admit or deny the allegations in Paragraph 13 of Plaintiff's Original Petition.

14. Murphy denies all of the allegations in the Prayer of Plaintiff's Original Petition, and specifically denies that Plaintiff is entitled to the recovery of any damages, expenses, pre-judgment interest, post-judgment interest, or costs of Court from Murphy.

II. AFFIRMATIVE DEFENSES

FIRST DEFENSE

15. Murphy affirmatively denies each and every allegation contained in Plaintiff's Original Petition, and demands strict proof thereof.

SECOND DEFENSE

16. Murphy affirmatively asserts that a third party, for whom Murphy is not liable, was the cause of the November 1, 2006 collision forming the basis of Plaintiff's lawsuit and all injuries and damages asserted by Plaintiff therein.

THIRD DEFENSE

17. Murphy affirmatively asserts that Plaintiff was contributorily negligent. Plaintiff's injuries and damages, if any, were the result of Plaintiff's own actions, and such actions were the proximate cause, in whole or in part, of the injuries for which Plaintiff now seeks recovery.

FOURTH DEFENSE

18. Murphy affirmatively asserts that Plaintiff's injuries and damages, if any, were the result of Plaintiff's own actions, including Plaintiff's failure to mitigate her own claimed injuries and damages.

III. DEMAND FOR JURY TRIAL

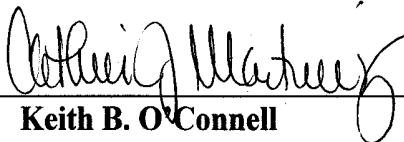
19. Defendant Murphy hereby asserts his rights under the Seventh Amendment to the United States Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Murphy prays that Plaintiff take nothing by her cause of action against him, that Defendant Murphy be dismissed herein and awarded his costs, and that Defendant Murphy have such other and further relief, both at law and in equity, to which he may show himself justly entitled.

Respectfully submitted,

O'CONNELL & BENJAMIN, L.L.P.



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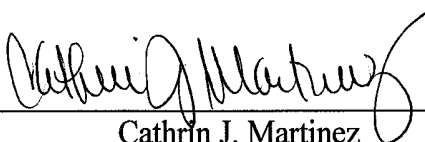
Telecopier: (210) 824-9429

**ATTORNEYS FOR DEFENDANT
CHRISTOPHER S. MURPHY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was filed and forwarded, via *certified mail, return receipt requested*, on this the 17th day of October, 2007, to the following counsel of record:

Mr. Robert L. Wilson, III
RL Wilson, P.C.
115 E. Travis, Suite 1230
San Antonio, Texas 78205



Cathrin J. Martinez